

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11020 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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DILIPSINH B RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR CB DASTOOR for Petitioner
MR UA TRIVEDI, AGP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 01/02/99

ORAL JUDGEMENT

This Special Civil Application has been filed by the son of the deceased employee who died in harness. The petitioner seeks appointment on compassionate grounds.

2. The petitioner has come out with a case that his father was an Ambulance Driver in G.D.General Hospital, Visnagar, District Mehsana. He had served for a period of nearly 26 years and died in harness on 5th April 1991. The petitioner son being a Graduate in Arts and holder of the certificates of typing in English and Gujarati, applied in April 1991 for appointment as Clerk on compassionate grounds. A reply dated 9th June 1992 was

sent to the petitioner informing him that in view of the letter dated 18th May 1992 received from the Health and Family Welfare Department and in view of the relevant orders issued by the GAD, his application cannot be accepted. The petitioner then submitted an application dated 15th September 1993 that a copy of the letter dated 18th May 1992 on the basis of which his application for appointment on compassionate grounds had been rejected, may be made available to him at his expenses, yet the same was not made available to him. In these circumstances, the petitioner moved this Special Civil Application on 29th September 1993 wherein the notice was issued in January 1994 and thereafter Rule was issued on 6th October 1994. The respondents have filed affidavit-in-reply dated 16th November 1994 in which they have taken a stand that the breakup of the monthly income of the family of the deceased Government servant, namely, Baldevbhai V. Rathod, i.e. father of the petitioner is as under:

- (1) Family Pension (single rate) Rs. 450/-
- (2) Dearness Allowance - 51% Rs. 383/-
- (3) Medical Allowance Rs. 75/-
- (4) Total of Pension Rs. 908/-

Income from agriculture Rs. 225/-

Rs.1,133/-

Thus, the total monthly income of the family comes out to be Rs.1,133/-.

In paragraph 4 of this affidavit-in-reply, it has been mentioned that a copy of the Circular dated 3.6.1988 is annexed as Annexure.I to this reply, but such Circular in fact, has not been annexed with the reply and the Circular or the copy thereof is not available with the learned Asstt. Govt. Pleader even today when the matter is taken up. However, the stand of the respondents is that as per the relevant Circulars, the total monthly income of the family should not exceed Rs.1,000/- and whereas the total monthly income of the family of the deceased is Rs.1,133/-, i.e. more than Rs.1,000/- per month, the petitioner has not been found to be entitled for appointment on compassionate grounds.

3. Learned Counsel for the petitioner has argued that while computing the monthly income for the purpose of examining the eligibility for seeking appointment on compassionate grounds, the family pension cannot be included and the appointment on compassionate grounds

cannot be denied on the ground of receipt of family pension. To buttress his argument, the learned Counsel for the petitioner has placed reliance on a decision of this Court on the case of C.B.Maru v. Dhanduka Nagar Panchayat, reported in 1993 (2) GLH 822 and yet another decision of this Court in the case of Manubhai Gothabhai Desai v. State of Gujarat and ors., reported in 1998 (1) GLH (UJ) 23. In C.B. Maru's case (*supra*), this Court while placing reliance in the case of Smt. Phoolwati v. Union of India and ors., reported in AIR 1991 SC 469, has taken the view that merely because the widow of the deceased employee was entitled to some retiral benefits, that by itself can never be made a ground to refuse appointment to the son of the deceased employee on compassionate grounds. In that case, the widow of the deceased employee was getting a family pension of Rs.645/- per month and her husband had died on 15th October 1990. In the case of C.B.Maru (*supra*), the other details of income regarding Dearness Allowance, Medical Allowance, etc. had not been given, but looking to the amount of family pension of Rs.645/-, it is obvious that if the Dearness Allowance, and Medical Allowance had been taken into consideration, the income may have exceeded Rs.1,000/-. In the present case, the father of the petitioner had died in April 1991 and, in the case of C.B.Maru (*supra*), the date of the death of the deceased is October 1990 and, therefore, there is hardly a difference of about six months in the date of the death. Even if 50% Dearness Allowance is added to Rs.645/-, it would come to Rs.645/- + Rs.322.50, i.e. Rs.967.50 and to that, even if the Medical Allowance of Rs.75/- is added or even Rs.50/-, it would exceed Rs.1,000/-. In any case, the fact remains that this Court has taken the view in the case of C.B.Maru, that appointment on compassionate grounds cannot be denied on the ground of receipt of retiral benefits including the amount of family pension. In another case of Manubhai Gothabhai Desai (*supra*), this Court, while placing reliance on C.B.Maru's case (*supra*), has categorically observed that while computing the income of the family, the amount of pension ought not to have been considered. In this view of the matter, there remains no scope to sustain the stand taken by the respondents to take the monthly income of the family in the present case to be more than Rs.1,000/- merely because the widow, i.e. petitioner's mother is getting Rs.450/- and the total income of the pension is Rs.908/-. If the income of the pension is not to be included as has been held by this Court in the cases as aforesaid, the monthly income of the petitioner's family would certainly come out to be less than Rs.1,000/- and therefore, this Court has no

hesitation in holding that the stand taken by the respondents and the denial of the consideration of the petitioner's case for appointment on compassionate grounds as has been taken by the respondents and conveyed to the petitioner is not at all tenable in eye of law. On such grounds, the petitioner's application could not be rejected for appointment on compassionate grounds. The communication sent to the petitioner as contained in Annexure.A dated 9.6.1992 rejecting his application is, therefore, set aside. The respondents are directed to consider the petitioner's application for appointment on compassionate grounds on merits and to consider and decide the petitioner's application for appointment on compassionate grounds in accordance with law and in doing so, the appointment shall not be denied to the petitioner on the ground that the monthly income of the family exceeds Rs.1,000/- . The respondents are directed to take a decision on the petitioner's application for appointment on compassionate grounds, at the earliest possible opportunity and issue appropriate orders in accordance with law within a shortest possible period, but in no case, later than a period of one month from the date of the copy of this order is served upon the respondent authority. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms as aforesaid. It would be open for the petitioner to serve the certified copy of this order and for that purpose, direct service is permitted.

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